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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,769	03/16/2004	Darryl L. Schmitz	8929/3049	3138

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EXAMINER

MAYO, TARA L

ART UNIT PAPER NUMBER

3671

DATE MAILED: 08/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/801,769	Applicant(s) SCHMITZ ET AL.	
	Examiner Tara L. Mayo	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7,9 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,9 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. Claims 1, 4, 5, 6, 7, 9 and 17 through 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepherd (U.S. Patent No. 195,850).

Shepherd '850, as seen in Figures 1 and 2, shows a sleep surface comprising:
with regard to claim 1,

a first section (A) having a longitudinal side including a first upper lip (E) and a first lower lip (G'), each of said first upper and lower lips having an inner surface and an outer surface, said upper and lower lips defining a receiving channel therethrough;

a second section (C) having a longitudinal side including a second upper lip (upper rim) and a second lower lip (lower rim), each of said second upper and lower lips having an inner surface and an outer, said second upper lip and said second lower lip received into said receiving channel, wherein the outer surface of said second upper lip abuts the inner surface of said first upper lip and the outer surface of said second lower lip abuts the inner surface of said first lower lip forming an overlap between the first section and the second section, wherein said longitudinal side of said second section is attached to the longitudinal side of the first section; and further wherein each section is constructed and arranged to maintain an air pressure therein that is independent of an air pressure in the other section; and further wherein said first and second bladders are capable of being folded into a sleeper sofa when not in use (specifically, by detaching one of elements E and E');
with regard to claim 9,

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further comprising a reinforcing member (G) operably attached to the first and second sections over the overlap.

Shepherd '850 fails to teach:

the first and second sections being bladders;

the longitudinal side of the first bladder being heat welded to the longitudinal side of the second bladder; and

the longitudinal side of the second bladder being attached to the longitudinal side of the first bladder with a hook and loop fastener, a zipper or a plurality of snaps.

With regard to claim 1, it would have been obvious to one having ordinary skill in the art of beds at the time the invention was made to modify the device shown by Shepherd '850 by substituting bladders for the first and second sections since the Examiner takes Official Notice of the functional equivalence of bladders and mattresses as sleep surfaces in the art of beds.

With regard to claim 4, it would have been obvious to one having ordinary skill in the art of beds at the time the invention was made to modify the device shown by Shepherd '850 such that the longitudinal side of the first bladder would be heat welded to the longitudinal side of the second bladder. The motivation would have been to permanently secure the first and second bladders to one another.

With regard to claims 5 through 7, it would have been obvious to one having ordinary skill in the art of beds at the time the invention was made to modify the device shown by Shepherd '850 such that the longitudinal side of the second bladder would be attached to the

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longitudinal side of the first bladder with a hook and loop fastener, a zipper or a plurality of snaps instead of buttons. The motivation would have been to releasably secure the first and second bladders to one another with attachment means equivalent to buttons.

With regard to claims 17 through 20, the method steps recited therein are inherent to the use of the device shown by Shepherd '850 and as modified above.

With specific regard to claim 17, in view of the teaching by Shepherd '850 for the desirability of making mattresses more convenient for packing or handling (second full para.), it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method disclosed by Shepherd '850 such that it would further include the step of folding the first and second bladders into a sleeper sofa when not in use. The motivation would have been to facilitate the use and storage of the prior art device in a sleeper sofa.

Response to Arguments

2. Applicant's arguments filed 15 June 2006 have been fully considered but they are not persuasive.

In response to Applicant's statement that the device shown by Shepherd '850 as modified above is not capable of being folded into a sleeper sofa, the Examiner contends that the bladders are capable of being folded as set forth in the above Office Action.

Furthermore, the Examiner notes that because Applicant did not traverse the Examiner's assertion of Official Notice; therefore, the common knowledge or well-known in the art statements are taken to be admitted prior art.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to be 'tm'.

10 August 2006

A large, stylized handwritten signature in black ink, likely belonging to Thomas B. Will.

Thomas B. Will
Supervisory Patent Examiner
Group 3600